IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3411 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIVISIONAL CONTOLLER & 3 - Petitioner(s)

Versus

LAXMIBEN BABUBHAI MAKWANA - Respondent(s)

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Appearance :
MR HS MUNSHAW for Petitioner(s) : 1,
MR TR MISHRA for Respondent(s) : 1, 1.2.1, 1.2.2, 1.2.3,1.2.4
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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 16/01/2006

ORAL JUDGMENT

1. Heard learned Advocate, Mr.H.S.Munshaw, on behalf of petitioner and learned Advocate, Mr.T.R.Mishra, appearing on behalf of respondents. The respondent – workman was expired during pendency of this petition on 20th

August,2004. Thereafter, by Civil Application No.8675 of 2004, the legal heirs of respondent are brought on records. Accordingly, cause title of Special Civil application has been amended.

2. Rule has been issued by this Court on 16th June,2004 and interim relief in terms of Para.8(C) has granted. In present petition, petitioner – Corporation has challenged award passed by Labour Court, Amreli in Reference No.109 of 2001 vide Exh.36, wherein, Labour Court has set aside dismissal order, granted reinstatement with continuity of service without back-wages of interim period.

3. Learned Advocate, Mr.Munshaw, submitted that it is a case of misappropriation proved in departmental inquiry and subsequent to dismissal order was passed by Corporation. He submitted that date of birth of respondent was 8th March,1948. The respondent was joined in service on 23rd May,1971. The bus of respondent – workman was checked on 5th January,1977 wherein certain allegations were made against him. Then, after completion of the departmental inquiry, he was dismissed from service on 28th February,1979. Then, respondent – workman

had filed Civil Suit No.44 of 1981 which was withdrawn subsequently after a period of 10 years on 4th January,1991. Then, respondent – workman raised industrial dispute being Reference No.45 of 1991 which was transferred to Labour Court, Amreli being Reference No.109 of 2001. Then, Labour Court, Amreli has passed award on 2nd August,2003 and on 28th August,2004, respondent – workman has died. On the basis of above facts, learned Advocate, Mr.Munshaw, has submitted that more than 20 years have passed from date of dismissal in legal proceedings initiated by respondent – workman. Therefore, granting benefit of continuity also, will adversely affect the financial position of Corporation. He also submitted that Labour Court has committed gross error in modifying punishment when charge or misappropriation was found to be proved in departmental inquiry. He, therefore, submitted that now respondent – workman has died, therefore, question of reinstatement does not arise and Labour Court has committed gross error and, therefore, award is required to be set aside as benefit of reinstatement is not possible.

4. Learned Advocate, Mr.T.R.Mishra, submitted that Labour Court has appreciated evidence of departmental

inquiry and after appreciating evidence, Labour Court has come to conclusion that charge of misappropriation is not proved but, at the most, charge of negligence was proved. He submitted that Labour Court has power under Section 11-A of the I.D.Act,1947. Therefore, Labour Court has not committed any error while passing such award. However, he submitted that now workman has died and, therefore, question of reinstatement does not arise and now widow, sons and daughters are legal representatives of the respondent – workman. Therefore, learned Advocate, Mr.T.R.Mishra, submitted that some lumpsum amount may be awarded while confirming award in favour of widow, instead of implementation of award in question.

5. I have considered submissions made by both learned Advocates. I have also kept in mind the dates and events given by Mr.Munshaw. I have also considered the fact that workman had remained in service about 8 years and more than 20 years' time has been spent in legal proceedings. I have perused the award and reasoning given by Labour Court. Labour Court has re-appreciated evidence led in departmental inquiry and come to conclusion that charge of misappropriation is not proved but, charge of negligence was found to be proved. This re-appreciation

by Labour Court is within its jurisdiction while exercising power under Section 11-A of the I.D.Act,1947. Therefore, Labour Court has rightly re-appreciated the evidence and come to conclusion that it is a charge of negligence was proved and punishment of dismissal is harsh. Therefore, Labour Court has granted reinstatement in service. But, question is that if suppose the reinstatement with continuity of service, award is confirmed, then, 20 years period which was spent by respondent for legal proceeding become burden upon Corporation. For that, Corporation has to unnecessary make payment of retirement benefits. Learned Advocate, Mr.Munshaw, submitted that, that may be a huge amount for more than 33 years service to be considered continuous. In view of these facts, while keeping in mind that workman has died, reinstatement is not possible and to calculate retirement benefit as per award, then, it must be a huge amount to be paid by Corporation to legal representatives of deceased workman. Therefore, considering facts and circumstances of case and special events that workman had died on 20th August,2004, according to my opinion, if some lumpsum amount as compensation to be awarded in favour of widow, then, it will be meet the ends of justice between the parties.

Therefore, according to my opinion, looking to this dates and events and workman had completed more than 8 years service before dismissal and now only widow, sons and daughters are remained, therefore, if it is directed to the petitioner – Corporation to pay Rs.30,000/- being a lumpsum amount for satisfaction of the award, that may be in larger interest of justice put the end of the matter between Corporation and legal representatives of deceased workman.

6. Accordingly, award is modified. Petitioner – Corporation is directed to pay Rs.30,000/- to Laxmiben Babubhai Makwana within a period of 2 months after proper verification. Rule is made absolute with no order as to costs.

(H.K.RATHOD,J.)

(vipul)